

Amendment No. 1 to SB0368

Bailey
Signature of Sponsor

AMEND Senate Bill No. 368*

House Bill No. 1182

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 66, is amended by adding the following as a new chapter:

66-33-101. Short title.

This chapter is known and may be cited as the "Real Property Records Integrity Act."

66-33-102. Definitions.

As used in this chapter:

- (1) "Person" means a natural person, partnership, association, cooperative, corporation, trust, or other legal entity;
- (2) "Recording" means presenting a document to a county register in this state for official placement in the public land records;
- (3) "Residential real estate" means real property located in this state that is used primarily for personal, family, or household purposes and is improved by one (1) to four (4) dwelling units;
- (4) "Service agreement" means a contract pursuant to which a person agrees to provide services in connection with the sale of residential real estate or the sale of any product or the performance of any personal service on or for the maintenance of residential real estate; and
- (5) "Service provider" means a person who provides services or products to a consumer.

66-33-103. Service agreements.

(a) The general assembly finds and declares that:

(1) The public policy of this state favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property; and

(2) A recorded service agreement violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the contract or the amount of the consideration set forth in the agreement.

(b) A recorded service agreement is void and unenforceable under this chapter if the agreement:

(1) Purports to run with the land or to be binding on future owners of interests in the real property;

(2) Allows for assignment of the right to provide services without notice to and the consent of the owner of residential real estate; or

(3) Purports to create a lien, encumbrance, or other real property security interest.

(c) This chapter does not impair:

(1) The rights granted or applied involving a mechanic's or materialmen's lien under title 66, chapter 11;

(2) The furnishing of a loan or other thing of value to be secured by real property as otherwise provided by law;

(3) An agreement entered into by a nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, or manufactured homes; or

(4) Any interest in real property created pursuant to a declaration, covenant, or other applicable law, pertaining to the oversight or management of real property.

66-33-104. Recording prohibited.

(a) A service provider shall not record or cause to be recorded a service agreement or notice or memorandum of the agreement in this state.

(b) A service provider who records or causes to be recorded a service agreement or notice or memorandum of the agreement in this state in violation of § 66-33-103 is liable to an affected party for ten thousand dollars (\$10,000) in statutory damages.

(c) Notwithstanding chapter 24 of this title, a register in this state may refuse to accept for recordation a service agreement and is not liable for mistakenly recording an unfair service agreement.

(d) If a service agreement is recorded in violation of this chapter, then it does not constitute actual or constructive notice to an otherwise bona fide purchaser or creditor.

66-33-105. Recording of court order.

If a service agreement or a notice or memorandum of the agreement is recorded in violation of this chapter, then a person with an interest in the real property that is the subject of the agreement may apply to a court of competent jurisdiction in the county where the recording exists to record a court order declaring the agreement unenforceable.

66-33-106. Rights of recovery.

(a) If a service agreement or a notice or memorandum of the agreement is recorded in violation of this chapter, then a person with an interest in the real property that is the subject of the agreement:

(1) May recover actual damages, court costs, and attorney's fees in addition to the statutory damages described in § 66-33-104(b); and

(2) Has all rights and remedies available to the person under § 47-18-109.

(b) This chapter may also be enforced by the attorney general and reporter on behalf of the citizens of this state.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.